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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Chambered Custom Firearms LLC, et al.,

No. CV-24-0521-PHX-DMF

10 Petitioners,

ORDER

11 v.

12 Kristina Babcock,

13 Respondent.
14

15 In March 2024, Petitioners Chambered Custom Firearms, LLC (“Chambered
16 Custom”) and John Lamontagne (together “Petitioners”) brought this action against
17 Respondent Kristina Babcock in her official capacity as Director of Industry Operations
18 for the Bureau of Alcohol, Tobacco, Firearms, and Explosives’ (“ATF”) Phoenix Field
19 Division (“Respondent”) (Doc. 1). All parties have consented to proceed before a United
20 States Magistrate Judge pursuant to 28 U.S.C. § 636 (Docs. 11, 17).

21 This matter is before the Court on two motions (Docs. 6, 15), both of which are ripe.
22 Petitioners move the Court to deem the Petition initiating this matter filed on March 11,
23 2024, rather than on March 12, 2024, as reflected on the Court’s electronic docket (Docs.
24 6, 8).¹ Respondent opposes Petitioners’ motion and moves to dismiss this matter pursuant

25 ¹ Petitioners’ motion is misnamed with the date March 11, 2023, but it is clear from the
26 motion’s contents and the record in this matter that Petitioners request that the Court deem
27 the Petition filed on March 11, 2024, not March 11, 2023. Further, Petitioners’ motion is
28 not ex parte as designated in the title (Docs. 6, 8). The motion was filed on the public
docket, and the Court issued an order that Petitioners’ motion would not be considered
until Respondent had opportunity to respond to the motion after service of process upon
Respondent in this matter (Doc. 13).

1 to Rule 12(b)(1) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), for lack of
 2 jurisdiction (Doc. 15). The issue underlying both motions is the timeliness of the Petition
 3 initiating this matter (Docs. 6, 15). The Court’s electronic docket reflects that Petitioners
 4 filed the Petition on March 12, 2024 (Doc. 1). Petitioners move to have the Petition deemed
 5 filed on March 11, 2024 (Docs. 6, 8), which the parties agree would be timely filed pursuant
 6 to 18 U.S.C. § 923(f) because the sixty days proscribed in 18 U.S.C. § 923(f)(3) fell on
 7 Sunday, March 10, 2024 (Doc. 15 at 2, lines 27-28; *Id.* at 10, lines 8-10, citing Fed. R. Civ.
 8 P. 6(a)(1)(C)). Respondents oppose Petitioners’ motion (Doc. 15); Respondents move to
 9 dismiss this matter as untimely filed and therefore lacking subject matter jurisdiction (*Id.*).

10 The Court has carefully considered the motions, the briefing and materials in
 11 support, the record in this matter, and the applicable law. As set forth below, the Court
 12 will deny the motions without prejudice and will order Respondent to file a responsive
 13 pleading to the Petition in the timeframe set forth in Fed. R. Civ. P. 12(a)(4)(A); the Court
 14 will thereafter set a case management conference. The Court will also direct that the Clerk
 15 of Court rename the parties as Petitioners and Respondent on the Court’s electronic docket,
 16 consistent with the parties’ designations in this matter.

17 **I. BACKGROUND**

18 Petitioner John Lamontagne (“Petitioner Lamontagne”) is the sole member of
 19 Petitioner Chambered Custom, which was organized as an Arizona LLC in February 2023
 20 (Doc. 1 ¶¶ 7-8). In February 2023, Petitioner John Lamontagne submitted an application
 21 to ATF for a federal firearms license (“FFL”) under the Gun Control Act of 1968 (“GCA”),
 22 18 U.S.C. Chapter 44 and associated regulations, on behalf of Petitioner Chambered
 23 Custom for Petitioner Chambered Custom’s premises located at 520 North Bullard, Suite
 24 37, Goodyear, AZ 85335 (Doc. 1 ¶ 9). Petitioner Lamontagne was the sole responsible
 25 person identified on Petitioner Chambered Custom’s FFL application (*Id.* ¶ 10).

26 ATF denied Petitioner Chambered Custom’s application for an FFL; a hearing was
 27 requested and conducted; and thereafter Respondent issued the Final Notice of Denial,
 28 which is the subject of this action (*Id.* ¶¶ 1, 13, 14, 15). ATF issued the Final Notice of

Denial in January 2024 (Docs. 15-1, 15-2, 15-3). Respondent submitted evidence that Petitioners received the Final Notice of Denial by mail on January 10, 2024 (Docs. 15-1, 15-2, 15-3, 15-4). Petitioners do not contest that the Final Notice of Denial was received by Petitioners on January 10, 2024 (*see* Doc. 19). The GCA provides that an applicant who has received a final notice of denial of a FFL “may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a de novo judicial review of such denial or revocation.” 18 U.S.C. § 923(f)(3). Sixty days from January 10, 2024, was Sunday, March 10, 2024.

II. PROCEDURAL HISTORY/POSTURE AND PERTINENT FACTS

The Court’s electronic docket reflects that Petitioners filed this action on March 12, 2024 (Doc. 1). Petitioners request that the Court deem the Petition to have been filed on March 11, 2024 (Docs. 6, 8), which the parties agree would be timely pursuant to 18 U.S.C. § 923(f)(3) because the sixty days from receipt of Final Notice of Denial fell on Sunday, March 10, 2024 (Doc. 15 at 2, lines 27-28; *Id.* at 10, lines 8-10, citing Fed. R. Civ. P. 6(a)(1)(C)). Respondents oppose Petitioners’ motion and move to dismiss this matter as untimely filed and therefore lacking subject matter jurisdiction (Doc. 15). Alternatively,

Respondent requests an opportunity to conduct jurisdictional discovery into the filing issue raised in Petitioners’ Ex Parte Motion to Deem the Petition Filed on March 11, 2024[4] (Doc. 6). Because the filing issue bears on the Court’s subject matter jurisdiction, Respondent reserves the right to re-assert the lack of subject matter jurisdiction following jurisdictional discovery. (*Id.* at 11).

In support of Petitioners’ motion (Doc. 6), Petitioners submitted an April 3, 2024, declaration of Louisa Beck, a legal assistant at one of the law firms representing Petitioners in this matter (Docs. 6-1, 8).² Ms. Beck’s declaration states that on March 11, 2024, she received the Petition in final form from the attorney for filing with the Court, and on that

² The same declaration was submitted as an attachment to the motion (Doc. 6-1) and as a separate filing with exhibits (Doc. 8).

1 day used Google Chrome for filing the Petition based on standard office practice and
 2 because Ms. Beck believed it to be the most reliable web browser based on personal
 3 experience with filings using the Court's Electronic Document Filing System (Doc. 8 ¶¶ 5,
 4 6). On March 11, 2024, using the "File a New Civil Case" link, Ms. Beck added required
 5 information and when prompted, uploaded the Petition and Civil Cover Sheet. Ms. Beck
 6 declares that when prompted, she paid the \$405 fee for a case-opening filing, received a
 7 receipt for payment, and was redirected back to the Electronic Document Filing System in
 8 which a screen confirmed that the new case would be processed within one business day
 9 but the file date would be the date the documents were submitted and the filing fee paid
 10 (Doc. 8 ¶¶ 7, 8, 9). Ms. Beck clicked "Next" and was directed to the Electronic Document
 11 Filing System home screen (Doc. 8 ¶ 10).

12 At this point, it appears that Ms. Beck was at Step 12 and was trying to reach Step
 13 13 of the 14 steps outlined in How to Submit Case Opening Documents in the United States
 14 District Court for the District of Arizona ("Case Opening Manual") available on this
 15 Court's website. See [N:\CM-ECF Implementation Project\2013 Information\Internet Site
 16 Training Modules\How to Submit Case Opening Documents\Cover She \(uscourts.gov\)
 17 \[https://perma.cc/8KGW-QNJF\]](N:\CM-ECF Implementation Project\2013 Information\Internet Site Training Modules\How to Submit Case Opening Documents\Cover She (uscourts.gov) [https://perma.cc/8KGW-QNJF]) (last visited Sept. 27, 2024).³ Ms. Beck's declaration is

18 ³ As explained by Respondent, the Court:

19 provides detailed instructions on how to initiate a civil case. See How to
 20 Submit Case Opening Documents in the United States District Court for the
 21 District of Arizona (the "Case Opening Manual"), available at
 22 [https://www.azd.uscourts.gov/sites/azd/files/how%20to%20submit%20case
 23 %20opening %20documents.pdf](https://www.azd.uscourts.gov/sites/azd/files/how%20to%20submit%20case%20opening%20documents.pdf) (last accessed July 2, 2024). The Case
 24 Opening Manual details the fourteen (14) steps a filer must take when
 25 initiating a civil case in order to transmit the case initiation documents to the
 26 Clerk's office. Case Opening Manual at 1-10. The Case Opening Manual
 27 includes snippets of each screen the filer will encounter in the filing process.
 28 The "filing screen" that Ms. Beck believed consummated the filing, and
 which advises the filer to "print & retain the final screen as your receipt for
 submitting a new case" is Step 12. *Id.* at 9. After selecting "Next," the filer
 is taken to another screen that requires them to select between "Next" and
 "Clear." *Id.* When the filer selects "Next," they are then taken to a screen
 that displays the source path for the documents to be filed and requires the
 filer to again select "Next" or "Clear." If the filer selects "Next," they are
 taken to the final screen, which is the Notice of Electronic Filing that must
 be printed and/or saved as the filer's receipt of filing a new civil case. *Id.* at
 11.

1 silent as to Steps 13 and 14 of the Case Opening Manual (Doc. 8). Nevertheless, Ms. Beck
 2 declares that she did not receive any error messages or other alerts on March 11, 2024, and
 3 therefore believed the filing was complete on March 11, 2024 (Doc. 8 ¶¶ 11, 12).

4 Attached to Ms. Beck's declaration are: an automated email Ms. Beck received on
 5 March 11, 2024, confirming successful processing of payment to the Court on March 11,
 6 2024 (Doc. 8-1; Doc. 8 ¶ 8); a document described by Ms. Beck as a screenshot reflecting
 7 the CM/ECF page to which she was redirected after payment stating:

8 The clerk will assign a judge and process the new case. You will receive a
 9 NEF with the permanent case number and judge assignment.

10 Cases will be processed within one business day of receipt. The "File date
 11 will be the date documents were submitted AND the filing fee is paid through
 12 Pay.gov.

13 (Doc. 8-2; Doc. 8 ¶ 9); a document described by Ms. Beck as a screenshot reflecting the
 14 CM/ECF homepage which appeared after she clicked "Next" (Doc. 8-3; Doc. 8 ¶ 10);⁴ and
 15 the March 12, 2024 email Ms. Beck received from the Clerk of Court's Office regarding
 16 the matter, which stated:

17 Yesterday (3/11/2024), the United States District Court, District of Arizona
 18 received a \$405.00 filing fee (receipt number AAZDC-22835524) to open a
 19 new civil case. The case opening documents were never received. Please
 20 upload the documents using the "Clerk's Use Only" event located under the
 21 Utilities tab in the CM/ECF toolbar at the top of the screen. Once the
 22 documents have been correctly uploaded, the final screen will look like a
 23 NEF with a document number in our Master Case (2:24-at-99903). The file
 24 date will be the date that the documents are received by the District Court. If
 25 you are using Google Chrome, you will need to switch to a different browser
 26 (i.e. Edge or Firefox) to complete the filing. Please contact the Clerk's Office
 27 at 602-322-7200 with any further questions.

28 _____
 (Doc. 15 at 4-6).

⁴ This attachment could not be an actual screenshot from March 11, 2024, given that it reflects "Last login: 03-21-2024 15:42" (Doc. 8-3). Given the date on the described "screenshot" in Doc. 8-3 and the questions raised by Respondent as to the missing information from the "screenshots" reflected in Docs. 8-2 and 8-3 (Doc. 15 at 4), the Court infers that Doc. 8-2 is also an example of what Ms. Beck recalls as appearing on her screen on March 11, 2024, not an actual screenshot from March 11, 2024.

1 (Doc. 8-4). Ms. Beck declares that in response to the email, she “resubmitted the Petition
2 that had been electronically filed using the Electronic Document Filing System on March
3 11, 2024, pursuant to the instructions provided” (Doc. 8 ¶ 16). Further, when she received
4 the file-stamped copy of the Petition, Ms. Beck reports it was dated as having been received
5 on March 12, 2024, instead of March 11, 2024, when Ms. Beck states she “originally
6 electronically uploaded and filed it with the Clerk’s Office and paid the docketing fee”
7 (Doc. 8 ¶ 17).

8 Respondent opposes Petitioners’ motion and moves to dismiss this action pursuant
9 to Fed. R. Civ. P. 12(b)(1) for lack of jurisdiction (Doc. 15). In support, Respondent
10 submitted: a sworn declaration of Robin Zier, an ATF paralegal who is custodian of records
11 relating to mailing final notices of denial (Doc. 15-1); ATF’s January 2024 Final Notice of
12 Denial (Doc. 15-2); and United States Postal Service’s records reflecting Petitioners’
13 January 10, 2024, receipt of the Final Notice of Denial at the same address as listed for
14 Petitioner Chambered Custom on its FFL application (Doc. 15-2 at 6; Doc. 15-3; Doc. 15-
15 4; *see also* Doc. 1 ¶ 9).

16 Petitioners oppose Respondent’s motion to dismiss, incorporating all facts and
17 arguments contained in their previously filed motion (Doc. 19). With their opposition,
18 Petitioners submitted a supplemental declaration of Ms. Beck (Doc. 19-1) and a copy of
19 operative Electronic Case Filing User Manual (“ECF User Manual”) for this Court in
20 March 2024 (Doc. 19-2).⁵ Ms. Beck’s supplemental declaration states that as outlined in
21 her initial declaration, after she clicked “Next,” following Step 12 of the instructions to
22 submit Case Opening Documents, she was directed to the ECF home screen where there
23 was no opportunity to click “Next” or receive a Notice of Electronic Filing as outlined in
24 Steps 13 and 14 of the case opening instructions in the Case Opening Manual (Doc. 19-1
25 ¶¶ 5, 6).

26 Respondent filed a reply in support of Respondent’s motion to dismiss (Doc. 20).

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⁵ Respondent accurately reports that the ECF User Manual for this Court was updated in
June 2024 (Doc. 20 at 2, n.1).

1 **III. LEGAL FRAMEWORK**

2 **A. Subject Matter Jurisdiction / Fed. R. Civ. P. 12(b)(1)**

3 Federal Rule of Civil Procedure 12(b)(1) allows a defendant to raise the defense that
 4 the court lacks jurisdiction over the subject matter of an entire action or of specific claims
 5 alleged in the action. A district court must dismiss an action if it lacks subject matter
 6 jurisdiction over the suit. Fed. R. Civ. P. 12(b)(1); *Safe Air for Everyone v. Meyer*, 373
 7 F.3d 1035, 1039 (9th Cir. 2004). Federal courts have subject matter jurisdiction only as
 8 authorized by the Constitution and Congress. U.S. Const. art. III, § 2, cl. 1; *Kokkonen v.*
 9 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

10 A challenge pursuant to Fed. R. Civ. P. 12(b)(1) may be either facial or factual. *Safe*
 11 *Air for Everyone*, 373 F.3d at 1039. In a facial attack, the court may dismiss a complaint
 12 when the allegations of and documents attached to the complaint are insufficient to confer
 13 subject-matter jurisdiction. *See Savage v. Glendale Union High Sch. Dist. No. 205*, 343
 14 F.3d 1036, 1039 n.2 (9th Cir. 2003); *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th
 15 Cir. 2003). When considering a motion to dismiss for lack of subject matter jurisdiction,
 16 the Court takes as true the material facts alleged in the complaint. *See Whisnant v. United*
 17 *States*, 400 F.3d 1177, 1179 (9th Cir. 2005). The Court need not accept the truth of
 18 “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
 19 inferences.” *In re Gilead Sci. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (quoting
 20 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)). While “[i]n a facial
 21 attack, the challenger asserts that the allegations contained in a complaint are insufficient
 22 on their face to invoke federal jurisdiction[,]” in “a factual attack, the challenger disputes
 23 the truth of the allegations that, by themselves, would otherwise invoke federal
 24 jurisdiction.” *Safe Air for Everyone*, 373 F.3d at 1039. Yet:

25 [i]n resolving a factual attack on jurisdiction, the district court may review
 26 evidence beyond the complaint without converting the motion to dismiss into
 27 a motion for summary judgment. *Savage v. Glendale Union High Sch.*, 343
 28 F.3d 1036, 1039 n. 2 (9th Cir.2003) (citing *White*, 227 F.3d at 1242). The
 court need not presume the truthfulness of the plaintiff's allegations. *White*,
 227 F.3d at 1242. “Once the moving party has converted the motion to

dismiss into a factual motion by presenting affidavits or other evidence properly brought before the court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction.” *Savage*, 343 F.3d at 1039 n. 2.

*Id.*⁶

If a defendant files a Fed. R. Civ. P. 12(b)(1) motion attacking the existence of subject-matter jurisdiction, the plaintiff bears the burden of proving that jurisdiction exists. *Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). The plaintiff “bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence.” *United States ex rel. Mateski v. Raytheon Co.*, 816 F.3d 565, 569 (9th Cir. 2016) (quoting *United States v. Alcan Elec. & Eng'g, Inc.*, 197 F.3d 1014, 1018 (9th Cir. 1999)). “Jurisdictional requirements cannot be waived or forfeited” and “do not allow for equitable exceptions.” *Boechler, P.C. v. Comm’r of Internal Revenue*, 596 U.S. 199, 203 (2022).

B. Time Limit for Filing Petition with District Court

The GCA gives ATF the authority to issue, deny, and revoke FFLs. *See* 18 U.S.C. § 923(c)-(f). If ATF denies or revokes such an application, the FFL applicant may request a hearing to review his denial or revocation. 18 U.S.C. § 923(f)(2). After an administrative hearing and final notice of denial of a FFL, the GCA provides, in pertinent part:

[T]he aggrieved party may at any time within sixty days after the notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a de novo judicial review of such denial or revocation.

18 U.S.C. § 923(f)(3).

⁶ Federal Rule of Civil Procedure 12(d) does not reference motions to dismiss for lack of subject matter jurisdiction:

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

1 **C. Filing Petition / Commencing Civil Action**

2 “A civil action is commenced by filing a complaint with the court.” Fed. R. Civ. P.

3 3. “A person represented by an attorney must file electronically.” Fed. R. Civ. P.
4 5(d)(3)(a). A complaint “is filed when it is placed in the actual or constructive custody of
5 the court.” *United States v. Dae Rim Fishery Co., Ltd.*, 794 F.2d 1392, 1395 (9th Cir.
6 1986).

7 **IV. DISCUSSION**

8 **A. Respondent’s Motion to Dismiss (Doc. 15)**

9 Respondent’s motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) relies on the
10 premise that the sixty-day deadline in 18 U.S.C. § 923(f)(3) is jurisdictional (*see* Doc. 15
11 at 10-11; Doc. 20 at 6-7). Yet, neither Respondent nor Petitioners cite, let alone discuss,
12 pertinent recent United States Supreme Court cases regarding the non-jurisdictional⁷ nature
13 of various statutory time limits. *Harrow v. Dep’t of Def.*, 601 U.S. 480, 489 (2024); *see*
14 *also Wilkins v. United States*, 598 U.S. 152, 157 (2023); *Boechler*, 596 U.S. at 204. Based
15 on these United States Supreme Court cases, the Court concludes that the sixty-day time
16 limit in 18 U.S.C. § 923(f)(3) is not a jurisdictional time limit. Thus, Respondent’s motion
17 fails.

18 In the motion to dismiss, Respondent cites several district court decisions that have
19 construed the time limit in 18 U.S.C. § 923(f)(3) to be jurisdictional (Doc. 15 at 10). *See*
20 *Hiatt v. Webb*, No. 3:21-CV-00037-JMK, 2021 WL 4268892, at *3 (D. Alaska Sept. 20,
21 2021; *Creager v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, Civil Action No.
22 ELH-15-1518, 2016 WL 1077123, at *11 (D. Md. Mar. 18, 2016); *Farmer v. Bureau of*
23 *Alcohol Tobacco, Firearms & Explosives*, 456 F. Supp. 2d 893, 900 (S.D. Ohio 2006).
24 However, these cases predate the United States Supreme Court’s rulings in *Harrow* and
25 *Boechler*, which narrowed the applicability of subject matter jurisdiction as a defense when
26 the only issue is timeliness of filings. *See Boechler*, 596 U.S. at 200 (declining to extend
27 cases that “predate this Court’s effort to ‘bring some discipline’ to the use of the term

28 ⁷ United States Supreme Court opinions use “non-jurisdictional” and “nonjurisdictional” interchangeably.

1 ‘jurisdictional’” (quoting *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011)).

2 Time limitations on appeals from one Article III court to another are categorically
3 jurisdictional. *Harrow*, 601 at 488-89 (citing *Bowles v. Russell*, 551 U.S. 205 (2007)). It
4 appears that otherwise, “a procedural requirement [is] jurisdictional only if Congress
5 clearly states that it is.” *Boechler*, 596 U.S. at 204 (internal quotations omitted). Indeed,
6 “most time bars are nonjurisdictional.” *United States v. Wong*, 575 U.S. 402, 410 (2015).
7 Even if an “important” time limit is “framed in mandatory terms,” then “Congress must do
8 something special, beyond setting an exception-free deadline, to tag a statute of limitations
9 as jurisdictional.” *Id.*

10 The United States Supreme Court’s ruling in *Harrow* is particularly instructive that
11 18 U.S.C. § 923(f)(3) is a non-jurisdictional limit. In *Harrow*, the Supreme Court
12 unanimously ruled that the sixty-day time limit in 5 U.S.C. § 7703(b)(1), was non-
13 jurisdictional. *Harrow*, 601 U.S. at 489. That statute provides that a federal employee
14 subject to an adverse personnel action may appeal an unfavorable ruling from the Merit
15 Systems Protection Board to the Court of Appeals for the Federal Circuit. *Id.* at 482. In
16 pertinent part, 5 U.S.C. § 7703(b)(1) provides that “[n]otwithstanding any other provision
17 of law, any petition for review shall be filed within 60 days after the Board issues notice
18 of the final order or decision of the Board.” Despite the apparent mandatory and conclusory
19 nature of the statutory language, the Court held that the plaintiff’s tardy filing did not
20 deprive the federal court of subject matter jurisdiction. *Id.* at 485-86.

21 Like the plaintiff in *Harrow*, Petitioners in this matter are not appealing from one
22 Article III court to another; rather, they are appealing an adverse ruling from an
23 administrative board. Further, the language in 18 U.S.C. § 923(f)(3) mirrors that of 5
24 U.S.C. § 7703(b)(1), providing that “[t]he aggrieved party may at any time within sixty
25 days after the date notice was given under this paragraph file a petition with the United
26 States district court.” Indeed, the language of 18 U.S.C. § 923(f)(3) is more forgiving than
27 that found in 5 U.S.C. § 7703(b)(1), as Congress omitted the directive “shall,” opting for
28 the softer “may.” Applying the Supreme Court’s decision in *Harrow*, this Court construes

1 the time limit in 18 U.S.C. § 923(f)(3) to be non-jurisdictional. Therefore, this Court has
 2 subject matter jurisdiction over Petitioners' claims, and Respondent's motion to dismiss
 3 (Doc. 15) will be denied.

4 "Of course, the nonjurisdictional nature of the filing deadline does not help
 5 [Petitioners] unless the deadline can be equitably tolled." *Boechler*, 596 U.S. at 208. While
 6 jurisdictional limits are not subject to equitable tolling, non-jurisdictional time limits
 7 generally are subject to equitable tolling. *Id.* Although neither party expressly argues
 8 equitable tolling, the circumstances here may present a legal and factual basis for equitable
 9 tolling. *See id.* at 209 ("[N]onjurisdictional limitations periods are presumptively subject
 10 to equitable tolling."); *Harrow*, 601 U.S. at 483 ("The procedural requirements that
 11 Congress enacts to govern the litigation process are only occasionally as strict as they
 12 seem."); *Wong*, 575 U.S. at 407-412; *but see United States v. Brockamp*, 519 U.S. 347, 350
 13 (1997) (declining to apply equitable tolling in suit against the Government under 26 U.S.C.
 14 § 6511 when Congress "sets forth its time limitations in unusually emphatic form"). Given
 15 that the parties' briefing did not cite or discuss the recent United States Supreme Court
 16 opinions regarding the non-jurisdictional nature of various federally prescribed time limits,
 17 that the parties did not expressly argue regarding the applicability of equitable tolling given
 18 the non-jurisdictional nature of the time limit, and the early stage of this matter, it is
 19 premature for the Court to decide whether equitable tolling applies here to render the
 20 Petition timely filed.

21 **B. Petitioners' Motion to Deem Petition Filed on March 11, 2024 (Doc 6)**

22 In their motion and related filings, Petitioners argue that under Section II(O)(2)(f)
 23 of the Court's ECF Administrative Manual,⁸ their Petition initiating this action and civil
 24 cover sheet should be considered filed on March 11, 2024, and that the Court's actual

25 ⁸ The ECF Administrative Manual (updated in July 2024) is on the Court's website:
 26 <https://www.azd.uscourts.gov/sites/azd/files/adm%20manual.pdf> [https://perma.cc/3CJ4-
 27 7JG2] (last visited Oct. 1, 2024). The definition of "technical failure" appears unchanged
 28 from the version in place in March 2024 and cited by Petitioners in their motion (Doc. 6 at
 2). In the briefing, the parties reference the Court's Case Opening Manual, ECF User
 Manual, and ECF Administrative Manual, which are three different documents and
 together are referred to as the "ECF manuals."

1 receipt of documents on March 12, 2024, was the result of a technical failure on the part of
 2 the Court when Ms. Beck used the web browser Google Chrome on March 11, 2024, for
 3 submitting and electronically filing the case opening documents (Doc. 6).⁹ Although the
 4 ECF manuals do not specify Google Chrome as an approved browser, Petitioners argue
 5 that Ms. Beck, the legal assistant who attempted to upload Petitioner's opening documents
 6 on March 11, 2024, had used that internet service provider countless times before without
 7 issue (Doc. 8 ¶ 6), and, therefore, the failure to upload must have been the result of a
 8 technical failure of the Clerk's Office, constituting a "malfunction of court-owned/leased
 9 hardware, software, and/or telecommunications facility which result[ed] in the inability of
 10 a registered user to submit a filing electronically" (Doc. 6 at 2; *see also* Doc. 19).
 11 Petitioners emphasize that their arguments in support of the relief requested in their motion
 12 do not rely on the constructive filing doctrine, which allows for the receipt of documents
 13 not within the local rules to nevertheless be considered filed on the date which the court
 14 received them (Doc. 19 at 3).¹⁰ Instead, Petitioner's arguments are reliant on the ECF
 15 Administrative Manual, which provides, "[a] registered user whose filing is untimely due
 16 to a technical failure may seek relief from the court." ECF Administrative Manual §
 17 II(O)(2)(f).¹¹

18 As described by Respondent:

21 ⁹ *See supra* note 1.

22 ¹⁰ "A complaint is *constructively* filed, rather than *actually*, when it 'arrives in the custody
 23 of the clerk within the statutory period but fails to conform with formal requirements in
 24 local rules.'" *Perparos v. United Indus. Corp.*, No. CV-13-01786-PHX-SPL, 2015 WL
 25 11117075, at *3 (D. Ariz. Sept. 10, 2015) (quoting *Escobedo v. Applebees*, 787 F.3d 1226,
 26 1231 (9th Cir. 2015) (internal quotations omitted); *see also Loya v. Desert Sands Unified*
 27 *School Dist.*, 721 F.2d 279, 281 (9th Cir. 1983) ("[F]or purposes of the statute of limitations
 the district court should regard as 'filed' a complaint which arrives in the custody of the
 clerk within the statutory period but fails to conform with formal requirements in local
 rules.")). The Ninth Circuit held that strict adherence to local rules as jurisdictional
 requirements "conflict[ed] with Rule 1 of the Federal Rules of Civil Procedure, which
 provides that the Rules 'shall be construed to secure the just, speedy, and inexpensive
 determination of every action.'" *Loya*, 721 F.2d at 280-81.

28 ¹¹ This provision also appears unchanged in the ECF Administrative Manual (updated in
 July 2024). *See* Doc. 6 at 2.

1 “A registered user whose filing is untimely due to a technical failure may
 2 seek relief from the court.” Administrative Manual at Section II(O)(2)(f). A
 3 “technical failure” is defined as “a malfunction of court-owned/leased
 4 hardware, software, and/or telecommunications facility which results in the
 5 inability of a registered user to submit a filing electronically.” *Id.* at Section
 6 I(A). “Problems on the filer’s end, such as problems with the filer’s Internet
 service provider (ISP), or hardware or software problems, will not generally
 excuse an untimely filing.” Administrative Manual at Section II(O)(2)(b).

7 (Doc. 15 at 3; *see also* Doc. 20 at 5).

8 Respondent argues that in filing the Petition and other case opening documents, Ms.
 9 Beck avowed to having completed only twelve of the required fourteen steps to open a case
 10 outlined in the Case Opening Manual at page 12 and therefore did not properly file the
 11 Petition and did not exercise due diligence in ensuring the documents had been properly
 12 filed (i.e., Petitioners did not receive a NEF as receipt of filing a new civil case and did not
 13 try to refile the evening of March 11, 2024, to ensure the Court’s system was truly
 14 nonfunctioning) (Doc. 15 at 8; Doc. 20 at 3). Citing ECF User Manual at p. 4, Doc. 19-2
 15 at 8, Respondent also argues that Petitioners did not meet their burden of showing that the
 16 failure to upload was due to a technical failure of the Clerk’s office, as the ECF User
 17 Manual also notes that files can fail to upload if a user does not clear “temporary Internet
 18 files” before uploading (Doc. 19-2 at 8; Doc. 20 at 4). Respondent asserts:

19 Under similar facts, the courts have also denied similar motions to deem
 20 documents properly filed. For example, in *MG Star LLC v. AmGUARD Ins.*
 21 *Co.*, No. 123CV00560JLTEPG, 2023 WL 4488279, at *1 (E.D. Cal. July 12,
 22 2023), report and recommendation adopted, No. 123CV00560JLTEPG,
 23 2023 WL 5436008, at *1 (E.D. Cal. Aug. 23, 2023) the defendant filed a
 24 motion to deem its removal timely filed where it alleged that it had “uploaded
 25 the removal documents and exhibits . . . without receiving an error message,”
 26 had paid the filing fee, “hit the ‘next’ button to complete the submission,”
 27 and “did not receive an error message or any notification that the documents
 28 had not been received or that anything was not properly filed.” 2023 WL
 4488279, at *2. The court denied the defendant’s motion finding “there
 [was] no evidence that the notice of removal failed to upload on March 29,
 2023, due to a malfunction with the Court’s electronic filing system,” and
 that the defendant “should not have assumed the filing was complete until
 they received a ‘Notice of Electronic Filing,’ which it never did.” *Id.* at *4.

1 Similarly, in *Gallardo v. First Horizon Home Loans*, No. CV-20-00889-
2 PHX-MTL, 2020 WL 3414711, at *1 (D. Ariz. June 22, 2020), the Court
3 found that the declaration by the paralegal, which included a print out of the
4 ECF page at Step 14 (that included a footer showing the page address and
5 the date it was printed), *see* Doc. 6-1 in CV-20-00889-PHX-MTL, but did
6 not include a copy of the filing receipt at the final screen, was insufficient “to
7 conclude that all the steps necessary to electronically filed the petition for
8 removal were completed on [the last date to timely remove][,]” and denied
9 the defendant’s motion to deem the removal timely filed since there was
10 nothing showing that a processing error by the Clerk delayed the filing. 2020
11 WL 3414711, at *2.

12 (Doc. 15 at 7-8).

13 Respondent also argues that Petitioners bore the risk in experiencing technical
14 difficulties by filing at 7:43 p.m. on what the parties agree was the final possible day (Doc.
15 15 at 8; Doc. 20 at 3). In addition, Respondent argues that Petitioners were on notice that
16 Google Chrome was not a compatible browser with the Court’s electronic filing system
17 and have not established that Google Chrome was the cause of the Petition’s filing on
18 March 12, 2024, rather than March 11, 2024 (Doc. 20 at 4-5). Further, Respondent also
19 argues that even if the March 11, 2024 filing failed because of Google Chrome, Petitioners
20 have not established that this constitutes a “technical failure” under the ECF Administrative
21 Manual (*Id.* at 5-6). Moreover, Respondent questions the nature of the “screenshots” that
22 are submitted with Petitioner’s motion (Doc. 15 at 4) and requests an opportunity to
23 conduct discovery regarding the facts presented in support of Petitioner’s motion rather
24 than the Court grant the motion at this time (*Id.* at 11).

25 Petitioners argue that the circumstances in this matter are different from those in the
26 cases cited by the Respondent (Doc. 19 at 3-4). Petitioners argue “due to a technical
27 malfunction between Google Chrome and the Court’s electronic filing system, which was
28 unknown to Petitioners’ counsel at the time, the filing was not completed on March 11,
2024” (*Id.* at 2). Petitioners assert that they “had no way of knowing in advance of filing
the Petition, being that a prior appeal was filed via Google Chrome without issue” (*Id.* at
4). Indeed, Petitioners’ counsel avers that counsel “has successfully used the Court’s ECF
system on numerous prior occasions and electronically filed new actions using the exact

1 same procedures utilized in this instance” (*Id.* at 3). Petitioners further argue that the ECF
2 User Manual did not explicitly forbid the use of Google Chrome or that “non-ISP specified
3 browsers such as Google Chrome should not be used, or that a case opening [] document
4 could be deemed as filed later than the original filing date due to browser compatibility
5 issues” (*Id.* at 5-6). Petitioners also argue that a dismissal would waste judicial resources
6 by allowing them to resubmit their FFL application which would reroute them back to this
7 Court should that application be denied (*Id.* at 6).

8 The Court finds that the present record before the Court is insufficiently developed
9 for the Court to find the requisite “technical failure” Petitioners urge under the ECF
10 Administrative Manual, particularly in light of Respondent’s request for opportunity to
11 conduct discovery. Further, the arguments raised by the parties also appear pertinent to
12 consideration of equitable tolling. *See supra*, Section IV(A). Therefore, Petitioners’
13 motion (Doc. 6) will be denied without prejudice.

14 **V. CONCLUSION**

15 Because the sixty-day time limit in 18 U.S.C. § 923(f)(3) is non-jurisdictional and
16 it is premature to decide the applicability of equitable tolling legally and factually,
17 Respondent’s motion to dismiss (Doc. 15) will be denied without prejudice.

18 Because the record is not sufficiently developed for the Court to find that Petitioners
19 have established a technical failure as defined by the ECF Administrative Manual and it is
20 premature for consideration the equitable tolling issue as it relates to any motion to deem
21 the Petition timely filed, Petitioners’ motion (Doc. 6) will be denied without prejudice.

22 Respondent will be required to file a responsive pleading to the Petition in the
23 timeframe set forth in Fed. R. Civ. P. 12(a)(4)(A). The Court will thereafter set a case
24 management conference; the Court is inclined for the matter to proceed to discovery, etc.,
25 on all issues, not just the issue of the Petition’s timeliness.

26 Accordingly,

27 **IT IS HEREBY ORDERED** denying Petitioners’ motion to deem Petition filed on
28 March 11, 2024 (Doc. 6) without prejudice.

IT IS FURTHER ORDERED that Respondent shall file a responsive pleading to the Petition in the timeframe set forth in Fed. R. Civ. P. 12(a)(4)(A).

Dated this 2nd day of October, 2024.

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